

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
Voice (415) 904-5260



W6b

**Informational Briefing on the Trans-boundary Pollution Crisis in the
Tijuana River and Tijuana River Valley**

October 11, 2023

Correspondence



OFFICE OF THE GOVERNOR

October 10, 2023

Via Electronic Mail

Dr. Kate Huckelbridge, Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Kate.Huckelbridge@coastal.ca.gov

RE: Trans-Boundary Pollution Crisis in the Tijuana River and Tijuana River Valley

Dear Dr. Huckelbridge,

As you know, the Coastal Commission will receive an update on the longstanding Tijuana River sewage crisis during its upcoming meeting. Addressing that crisis has been a major priority for the Governor and his Administration. We believe the meeting will provide a valuable opportunity to share information with the Commission and interested stakeholders about the robust efforts that the State has taken to date on this issue and to address some misconceptions that have animated calls for the Governor to proclaim a state of emergency under the Emergency Services Act related to the Tijuana River.

Unlike like emergency declarations at a local level, state-level emergency proclamations are a significant exercise of the Governor's executive powers. The Governor's emergency powers include, for example, the authority to issue orders that have the force and effect of law and to suspend state laws that impede the emergency response. Cal. Gov't Code §§ 8567; 8571. Accordingly, the Governor invokes his emergency powers judiciously—and only when necessary and consistent with the scope of authority granted by the Emergency Services Act.

As noted, the Governor's emergency powers extend to waiving only *state* statutes and regulations, as necessary to facilitate emergency response and

recovery. For example, sections of the Coastal Act or other state laws could be waived if they would delay the U.S. International Border and Water Commission's work to construct the new facilities the federal government needs to adequately process wastewater entering the U.S. in the Tijuana River. To date, however, no one has identified or proposed any specific relief from state statutes or regulations necessary to facilitate emergency response and recovery, even in response to specific requests from our office to identify any needed suspensions.

Moreover, in this context, where federal entities are responsible for the wastewater facility, these state powers are inapplicable. A state proclamation of emergency cannot accelerate *federal* work needed on this federal facility that is in a federally-controlled area on an international border.

For this same reason, a state proclamation of emergency is not necessary to trigger a federal emergency declaration to support the *federal* response to this crisis. Section 501 of the Stafford Act specifically provides that the President may declare an emergency in a situation where the primary responsibility for emergency response belongs to the federal government because it involves an area for which exclusive or preeminent responsibility and authority rests with the federal government. See 41 U.S.C. § 5191(b). The South Bay International Wastewater Treatment Plant is a facility for which exclusive responsibility and authority rests with the federal government, and transboundary water flows also fall under the federal government's jurisdiction.

Although the Governor has not proclaimed a state of emergency because it would not actually aid the ongoing response to this crisis, he has taken a host of other actions focused on the real solution to this crisis—pushing the federal government to move urgently to upgrade the South Bay International Wastewater Treatment Plant and related facilities. Specifically:

- The Governor has engaged with federal and binational partners requesting urgent action and additional funding.
- The Governor joined state and local leaders representing the County of San Diego and 18 of the cities in Southern California in their support of the late Senator Feinstein and Senator Padilla's call for \$310 million to address the Tijuana River crisis.
- The Governor has focused on the unlocking of federal funds to ensure the necessary repairs can be funded for this federal water treatment plant.

This is in addition to the substantial enforcement actions that state agencies have taken in response to the crisis, including most recently a Notice of Violation issued by the San Diego Regional Water Quality Control Board to the

Dr. Kate Huckelbridge
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U.S. International Boundary and Water Commission on September 5, 2023, for its failure to comply with terms of an earlier enforcement order and its water discharge permit.

We hope this letter provides helpful context on the State's role in addressing the current crisis and will help keep the focus on actions and advocacy that will actually make a difference in addressing this crisis. Please feel free to share this letter with Commissioners and other interested stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sapp", with a long, sweeping horizontal stroke extending to the right.

DAVID SAPP
Legal Affairs Secretary
Office of Governor Gavin Newsom



ELENI KOUNALAKIS
LIEUTENANT GOVERNOR

October 10, 2023

Dear Chair Brownsey and Coastal Commissioners,

As Chair of the State Lands Commission (Commission), I am writing to express support for the California Coastal Commission's (CCC) work to bring attention to the ongoing trans-boundary pollution crisis affecting the Tijuana River Valley at the October 11, 2023, CCC meeting in Imperial Beach.

Public trust lands and resources in San Diego, both under the Commission's jurisdiction and under the jurisdiction of trustees of legislatively granted public trust lands, continue to be harmed by the ongoing pollution crisis. The Commission is committed to being an active partner in the efforts to discuss and implement targeted solutions that help improve water treatment and pollution control infrastructure in the Tijuana River Valley and address water quality concerns affecting public use and access to important coastal resources.

In April 2022, a coalition of government agencies and clean-water advocates, including the Commission, reached a settlement with the U.S. Section of the International Boundary and Water Commission (USIBWC) on cross-border water pollution in the Tijuana River Valley. The Commission joined the San Diego Regional Water Quality Control Board's action on December 13, 2018, alleging that the USIBWC's failure to address transboundary pollution violated the Clean Water Act. Other plaintiffs, including the San Diego Unified Port District, the cities of Imperial Beach, Chula Vista, and San Diego, and Surfrider, also filed claims against the USIBWC related to the transboundary pollution. In exchange for the dismissal of the lawsuits, USIBWC – which owns and supervises the operation and maintenance of the South Bay International Wastewater Treatment Plant in the Tijuana River Valley – agreed to improve its canyon collector network, support a main channel berm, improve its stakeholder communication, and take other steps to address pollution that flows across the border.

CCC staff prepared a Fact Sheet outlining the challenges impacting the pollution crisis, identifying impacts of pollution and poor water quality on ecological resources, public health and public access, and detailing current and ongoing work that is being done by local, state, and federal partners. The Fact Sheet addresses important questions regarding funding and timelines for the USMCA projects, needs for research

that seeks to understand the short and long-term impacts of pollution and poor water quality to the public and to the environment, and identification of solutions and resources to help affected communities address the health impacts of the associated air and water pollution from the transboundary flows. The Commission agrees that these are important and necessary questions that need to be addressed and offer our support to aid in elevating these concerns and pursuing solutions.

Please do not hesitate to reach out to me or to our staff working on the Tijuana River Valley transboundary pollution issue. The Commission supports the Coastal Commission's work to bring attention to the pollution crises and we look forward to collaborating on solutions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Eleni', written in a cursive style.

Ambassador Eleni Kounalakis (RET.)
Lieutenant Governor

cc: Dr. Kate Huckelbridge, Executive Director, Coastal Commission

Jennifer Lucchesi, Executive Officer, State Lands Commission

From: ExecutiveStaff@Coastal
To: Energy@Coastal
Subject: FW: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.
Date: Friday, October 6, 2023 4:30:23 PM

fyi

-----Original Message-----

From: Gary Brown <grbrown1946@gmail.com>
Sent: Wednesday, October 4, 2023 5:40 PM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Cc: Gary Brown <grbrown1946@gmail.com>
Subject: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.

Please support a request to the Governor and President that they declare a state of emergency to clean up the ocean contamination due to trans-boundary pollution. We also need at least \$310M more in federal funding to expand the South Bay International Wastewater Treatment Plant necessary to mitigate the ocean pollution. Please urge immediate federal and state actions in order to avoid decades more of ocean contamination that is an environmental disaster to the lower income communities of Imperial Beach, San Ysidro, National City, and western parts of Chula Vista. These are also communities of color.

If one of your primary missions is to ensure access to the beach for ALL people, please support cleaning up the ocean that is the beach for many lower income people and people of color in the communities of Imperial Beach, San Ysidro, National City, and Chula Vista.

From: ExecutiveStaff@Coastal
To: Energy@Coastal
Subject: FW: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.
Date: Friday, October 6, 2023 4:08:59 PM

fyi

-----Original Message-----

From: jason kramer <jason_a_kramer@yahoo.com>
Sent: Thursday, October 5, 2023 6:46 AM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Subject: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.

Unfortunately, my wife and I will not be able to attend, but we wanted to share with you our concerns about the trans boundary sewage problem and express our need for help.

Imperial Beach is a special place. It is classic Southern California, but nobody can surf anymore because of the sewage. IB is home to many Mexicans, immigrants, sailors and veterans. It is one of the most diverse and wonderful parts of San Diego. There is a unique wetland with bird life and an entire ecosystem that is Federally protected that is being jeopardized by Mexico's recklessness. The beaches are unsafe, the air is polluted, and people and wildlife are affected adversely.

We are asking for your help. We need action and results. For years politicians have promised money and conversations, but the problem has only worsened. The Federal government needs to address this issue affecting our community and more wealthy communities surrounding us. Governor Newsome must see the importance and we're asking for his help to secure additional money and resources to protect CA, oceanlife, birdlife and human life.

Ultimately, this is a solvable problem. That is our greatest frustration. Sewage and wastewater management is not new or novel science. It only requires the will to address the issue. We are pleading for that will to be employed and to restore this Southern California town to its majesty. This isn't simply an environmental issue, nor is it only about money or our relationship with Mexico. This is about Southern California and our responsibility to ensuring the safety and access to the beach and ocean for all life, human and animal. Our sailors and divers have to work in this environment. Our families live here. Please don't disregard us because we don't live in the wealthy coastal areas. Pressure Mexico to address this issue, demand that Biden and Newsome do what they were elected to do and protect the coastal area for everyone.

Thank you, Jason and Sarinya Kramer

Sent from my iPad

From: ExecutiveStaff@Coastal
To: Energy@Coastal
Subject: FW: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.
Date: Friday, October 6, 2023 4:11:43 PM

Fyi --

From: Amy Steward <amy@emeraldkeepers.org>
Sent: Friday, October 6, 2023 3:17 PM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Subject: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.

Dear Chair Brownsey and Commissioners,

I am writing on behalf of Emerald Keepers, a Coronado nonprofit whose sole purpose is to address local needs related to environmental stewardship and sustainability.

Since I can remember, border pollution has been an issue. My daughter – now 25 – surfed in her first Clean Water Now Surf Competition in Coronado at age 5. Serge Dedina from WildCoast was working on this issue long before then. Since that time, the crisis has continued to escalate. The sheer duration is staggering along with the water quality numbers from San Diego County.

My husband, my daughter and I have all been sick from our water with a stomach ailment lasting a week, MRSA, and an ear infection that resulted in surgery respectively. My husband, a retired SEAL, had a terrible skin infection when he went through training in 1978. We know of others who have become sick from the water.

This serious public health and environmental justice crisis is closing our local beaches and preventing coastal access for most of the year. With E-coli found in our water last month, the issue was raised to another level! Who would have thought living in Coronado would be like living in a third world country with sewage on our beaches and E-coli in our drinking water!

This crisis has gone on too long and impacted businesses, tourism, surfers, children, families, lifeguards, Border Patrol, Navy SEALs, national security and safety, people in San Diego who want to take their families to the beach and not get sick. . .

Please support an immediate emergency declaration at all levels of government and pursue all feasible solutions as quickly as possible.

Sincerely,

Amy Steward
President, Emerald Keepers

Amy Steward

Founder & President, Emerald Keepers
619-972-5509

www.emeraldkeepers.org
amy@emeraldkeepers.org

“Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has.” — Margaret Mead

From: ExecutiveStaff@Coastal
To: Energy@Coastal
Cc: [Teufel, Cassidy@Coastal](mailto:Teufel,Cassidy@Coastal)
Subject: FW: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.
Date: Monday, October 9, 2023 9:57:27 AM

fyi

From: Dan I Steward <danlstewrd@aol.com>
Sent: Friday, October 6, 2023 4:24 PM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Cc: Dan'I Steward <danlstewrd@aol.com>
Subject: Public Comment on October 2023 Agenda Item Wednesday 6b - Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley.

Dear Chair Brownsey and Commissioners,

I am writing as a concerned citizen, husband, father, Coronado resident, and retired Navy SEAL. Through decades of swimming and training in the ocean waters off San Diego I have watched steady deterioration of these waters due to sewage contamination from south of the border. During those same decades I listened to continual concerns, lamentations, and promises to rectify the problem — yet nothing ever really changed. Faced now with undeniable economic, environmental, social justice, and national security threats stemming from the pollution, action — NOT more chatter or finger-pointing — is paramount.

According to our elected representatives, the Mexican government is reacting more quickly to address the real problem than is the US. There is no excuse for a third world nation out-pacing the US... and no excuse for allowing the waters off our coast to become those of a third world nation.

As one of three coastal management agencies responsible for administering the federal [Coastal Zone Management Act](#) in California, your Commission is uniquely positioned to "... address issues such as ... terrestrial and marine habitat protection... industrial uses, water quality, offshore oil and gas development... and public works." Please [1] press ahead diligently and forcefully for immediate **emergency declarations** at all levels of government and [2] fulfill the Commission's role in finding and promoting feasible solutions to what can only be described as a growing and increasingly consequential problem.

Sincerely,

Dan'I Steward